

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DAVID ROSARIO,

Plaintiff,

VERIFIED COMPLAINT

-against-

INDEX NO.

THE CITY OF NEW YORK and POLICE OFFICER  
MICHAEL POMERANTZ (tax # 947364),

Defendants.  
-----X

Plaintiff, DAVID ROSARIO, complaining of the Defendants THE CITY OF NEW YORK and POLICE OFFICER MICHAEL POMERANTZ (tax # 947364), by his attorney, JESSE BARAB, ESQ., respectfully sets forth and alleges as follows:

1. That at the time of the commencement of this action, plaintiff DAVID ROSARIO resided in the city and State of New York, County and City of New York.
2. Upon information and belief, that at all times mentioned herein, defendant THE CITY OF NEW YORK was a municipal corporation within the State of New York.
3. That at all times mentioned herein, the New York City Police Department is a department/agency/instrumentality of the City of New York.
4. That at all times mentioned herein, Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) was a police officer duly employed by the New York City Police Department and stationed in the 46th Precinct of the New York City Police Department, located at 2120 Ryer Avenue, Bronx, New York 10457.
5. That at all times mentioned herein, Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) was acting under the color of law and in the course of his duties of as a police officer with the New York City Police Department.

6. That on or about October 4, 2011 at or about 7 p.m., Plaintiff DAVID ROSARIO was lawfully standing in front of a premises located along Morris Avenue, Bronx, New York on or about its intersection with East 176th Street.
7. That on or about October 4, 2011, Plaintiff DAVID ROSARIO was not engaged in any form of criminal activity.
8. That on or about October 4, 2011 and at all times mentioned herein, officers/agents/employees of the New York City Police Department did not have reasonable suspicion that DAVID ROSARIO had engaged in or was engaging in criminal activity.
9. That on or about October 4, 2011 and at all times mentioned herein, officers/agents/employees of the New York City Police Department did not possess probable cause to arrest DAVID ROSARIO.
10. That on or about October 4, 2011 and at all times mentioned herein, officers/agents/employees of the New York City Police Department did not possess a warrant to search or arrest plaintiff DAVID ROSARIO.
11. That on or about October 4, 2011 and at all times mentioned herein, officers/agents/employees of the New York City Police Department possessed a defective warrant to search or arrest plaintiff DAVID ROSARIO
12. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department approached Plaintiff DAVID ROSARIO and drew their firearms upon him.
13. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department placed Plaintiff DAVID ROSARIO in handcuffs.
14. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department placed Plaintiff DAVID ROSARIO in handcuffs.
15. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department searched Plaintiff DAVID ROSARIO's body.
16. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department then placed Plaintiff DAVID ROSARIO against scaffolding while he was still in handcuffs and then repeatedly kicked him.
- 17.

18. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department then threw Plaintiff DAVID ROSARIO onto the ground.
19. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department pulled Plaintiff DAVID ROSARIO off of the ground with a belt.
20. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department transported Plaintiff DAVID ROSARIO to the 46th Precinct, during which time they also engaged in verbal abuse of the Plaintiff.
21. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department arrested Plaintiff DAVID ROSARIO.
22. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department conducted a strip search of Plaintiff DAVID ROSARIO.
23. That on or about October 4, 2011, officers/agents/employees of the New York City Police Department confined Plaintiff DAVID ROSARIO in a holding cell.
24. That on or about October 4, 2011, while in confinement, Plaintiff DAVID ROSARIO asked officers/agents/employees of the New York City Police Department for medical attention but was ignored.
25. That on or about October 4, 2011, the officers/agents/employees of the New York City Police Department failed to inform Plaintiff DAVID ROSARIO of his right to remain silent.
26. That on or about October 4, 2011, the officers/agents/employees of the New York City Police Department failed to inform Plaintiff DAVID ROSARIO of his right to have an attorney present.
27. That officers/agents/employees of the New York City Police Department detained Plaintiff DAVID ROSARIO in a holding cell at the 46th Precinct until October 5, 2011.
28. That on or about October 5, 2011, the officers/agents/employees of the New York City Police Department took Plaintiff DAVID ROSARIO to the Bronx County Criminal Court at 215 East 161st Street, Bronx, New York 10451.

29. That Defendant THE CITY OF NEW YORK charged Plaintiff DAVID ROSARIO with a misdemeanor charge.
30. That Defendant THE CITY OF NEW YORK has continued with its prosecution of Plaintiff DAVID ROSARIO despite there being no basis for the prosecution.
31. That at all times mentioned herein, the officers/agents/employees of the New York City Police Department were acting within the scope of their agency/employment with Defendant THE CITY OF NEW YORK.
32. That on or about October 4, 2011, Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) arrested Plaintiff DAVID ROSARIO.
33. That at all times mentioned herein, Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) knew or should have known that there was no basis for the arrest of Plaintiff DAVID ROSARIO.
34. During the arrest of the Plaintiff DAVID ROSARIO, the Plaintiff was illegally confined and underwent severe pain and distress, both physically and psychologically.
35. At all times mentioned herein, the officers/agents/employees of the New York City Police Department had no reason to arrest and/or confine the plaintiff DAVID ROSARIO.
36. That at all times mentioned herein, the officers/agents/employees of the New York City Police Department acted under the color of state law in denying plaintiff DAVID ROSARIO's rights, privileges and immunities under the First, Fourth, Fifth, Eighth, Thirteenth and Fourteenth Amendments of the United States Amendment.
37. At all times mentioned herein, Defendant THE CITY OF NEW YORK knew or should have known that the charges against Plaintiff DAVID ROSARIO were baseless and there was no reason for his arrest on October 4, 2011.
38. That heretofore and on December 16, 2011, and within ninety (90) days after the claim herein sued about arose, the plaintiff DAVID ROSARIO caused a Notice of Claim and Intention to Sue, in writing, sworn to by or on behalf of the plaintiff to be served upon and filed with defendant THE CITY OF NEW YORK set forth the name and post office address of the plaintiff herein and his attorney, the nature of the claim, the time when, the place where and the manner in which the

claim arose, and the items of damage or injuries claimed to have been sustained so far as then practicable.

39. That at least thirty (30) days have elapsed since the demand or claim upon which this action is predicated was presented to defendant THE CITY OF NEW YORK for adjustment and that it has neglected and/or refused to make adjustment or payment thereof.

40. That more than thirty (30) days have passed since the defendant THE CITY OF NEW YORK received notice of the claim filed by plaintiff DAVID ROSARIO regarding the incident complained of herein.

41. That on February 14, 2012, plaintiff DAVID ROSARIO sat for his examination pursuant to section 50-h of the General Municipal Law.

42. That the defendant THE CITY OF NEW YORK has waived its right to examine plaintiff DAVID ROSARIO pursuant to section 50-h of the General Municipal Law Regarding the incident complained of herein.

43. That this action is commenced within one (1) year and thirty (30) days after the cause of action accrued.

44. That the limitations set forth in CPLR section 1601 do not apply by reason of one or more of the exceptions of the CPLR section 1602.

45. That this action falls within one or more of the exceptions set forth in Section 1602 of the CPLR.

46. That as a result of the foregoing, plaintiff DAVID ROSARIO sustained damages in excess of the jurisdictional limits of all lower courts.

**COUNT 1: CLAIM FOR RECOMPENSATION PURSUANT TO 42 U.S.C. 1983 DUE TO VIOLATION OF FEDERAL CONSTITUTIONAL RIGHTS**

47. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 46 with the same force as if alleged in full herein.

48. The officers/agents/employees of the New York City Police Department illegally confined DAVID ROSARIO pursuant to an official policy of the City of New York.

49. The officers/agents/employees of the New York City Police Department arrested DAVID ROSARIO pursuant to an official policy of the City of New York.

50. The officers/agents/employees of the New York City Police Department inflicted psychological trauma and emotional distress to DAVID ROSARIO pursuant to an official policy of Defendant THE CITY OF NEW YORK.
51. The officers/agents/employees of the New York City Police Department illegally confined DAVID ROSARIO pursuant to customs and practices of Defendant THE CITY OF NEW YORK.
52. The officers/agents/employees of the New York City Police Department inflicted psychological trauma and emotional distress to plaintiff DAVID ROSARIO pursuant to customs and practices of Defendant THE CITY OF NEW YORK.
53. The officers/agents/employees of the New York City Police Department acted with a discriminatory purpose against plaintiff DAVID ROSARIO pursuant to customs and practices of Defendant THE CITY OF NEW YORK.
54. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) illegally confined DAVID ROSARIO.
55. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) illegally confined DAVID ROSARIO pursuant to an official policy of the City of New York.
56. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) arrested DAVID ROSARIO.
57. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) arrested DAVID ROSARIO pursuant to an official policy of the City of New York.
58. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) inflicted psychological trauma and emotional distress to DAVID ROSARIO.
59. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) inflicted psychological trauma and emotional distress to DAVID ROSARIO pursuant to an official policy of Defendant THE CITY OF NEW YORK.
60. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) illegally confined DAVID ROSARIO pursuant to customs and practices of Defendant THE CITY OF NEW YORK.

61. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) inflicted psychological trauma and emotional distress to plaintiff DAVID ROSARIO pursuant to customs and practices of Defendant THE CITY OF NEW YORK.
62. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) acted with a discriminatory purpose against plaintiff DAVID ROSARIO.
63. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) acted with a discriminatory purpose against plaintiff DAVID ROSARIO pursuant to customs and practices of Defendant THE CITY OF NEW YORK.
64. The illegal confinement of and infliction of emotional distress and psychological trauma upon plaintiff DAVID ROSARIO violated his rights as set out in the First, Fourth, Fifth and Eighth Amendments of the United States Constitution.

### **COUNT 2: VIOLATION OF DUE PROCESS**

65. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through \_ with the same force as if alleged in full herein.
66. The officers/agents/employees of the New York City Police Department denied plaintiff DAVID ROSARIO due process by placing him in confinement overnight despite not even having a basis for the initial arrest.
67. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) denied plaintiff DAVID ROSARIO due process by placing him in confinement overnight despite not even having a basis for the initial arrest.
68. That on or about October 4, 2011 and at all times mentioned herein, the illegal confinement was part of a custom and practice of the New York City Police Department.
69. This custom and practice of the New York City Police Department was the moving force, proximate cause and/or affirmative link behind the conduct which caused plaintiff DAVID ROSARIO's injuries.

### **COUNT 3: NEGLIGENCE**

70. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 with the same force as if alleged in full herein.

71. At all times, the officers/agents/employees of the New York City Police Department were acting within the scope of their duties as officer/agents/employees of the Defendant THE CITY OF NEW YORK.
72. The officers/agents/employees of the New York City Police Department owed a duty to the Plaintiff DAVID ROSARIO to perform their duties without the use of intimidation, coercion, verbal abuse and physical abuse and their conduct as set forth herein and refusing to abide by the Plaintiff's constitutional rights, when Plaintiff was unarmed and did not pose a threat of death or grievous bodily injury to said officers/agents/employees of the Defendant or others constitutes negligence.
73. Defendant THE CITY OF NEW YORK is liable for compensatory damages under the doctrines of respondeat superior for the negligence of actions of those aforementioned officers/agents/employees of the Defendant THE CITY OF NEW YORK committed within the scope of their employment or agency.
74. Defendant THE CITY OF NEW YORK owed a duty to the Plaintiff DAVID ROSARIO and others to train and supervise and otherwise control the officers/agents/employees of the New York City Police Department in the preventing use of coercion, intimidation, violation of Constitutional rights and other matters incidental to the exercise of police functions.
75. As a proximate result of Defendant THE CITY OF NEW YORK's failure to provide adequate training, supervision and control of said police officers/agents/employees, Plaintiff DAVID ROSARIO has sustained mental and emotional damage.
76. As a proximate result of Defendant THE CITY OF NEW YORK's failure to provide adequate training, supervision and control of said police officers/agents/employees, Plaintiff DAVID ROSARIO incurred and will continue to incur legal bills and other expenses. These injuries have caused and will continue to cause the Plaintiff pain and suffering, both mental and physical.
77. Defendant THE CITY OF NEW YORK's failure to provide adequate training and supervision to its police officers/agents/employees constitutes a willful and wanton indifference and deliberate disregard for human life and liberty and the rights of private citizens, including the plaintiff DAVID ROSARIO. Plaintiff is thus entitled to exemplary damages.



78. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) was negligent in his duties and acted in willful and wanton indifference and deliberate disregard for human life and liberty and the rights of private citizens, including the plaintiff DAVID ROSARIO. Plaintiff is thus entitled to exemplary damages.

#### **COUNT 4: TRESPASS AND CONVERSION OF PROPERTY**

79. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 78 with the same force as if alleged in full herein.

80. Defendant THE CITY OF NEW YORK's officers/agents/employees used the criminal process against the Plaintiff DAVID ROSARIO in order to trespass including conversion of property, of which the claimant was not guilty of the offense.

81. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) used the criminal process against the Plaintiff DAVID ROSARIO in order to trespass including conversion of property, of which the claimant was not guilty of the offense

82. As a proximate result of this malicious abuse of process, trespass and conversion of property, the Plaintiff DAVID ROSARIO suffered the damages as aforesaid.

#### **COUNT 5: ASSAULT AND BATTERY**

83. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 82 with the same force as if alleged in full herein.

84. Defendant THE CITY OF NEW YORK's officers/agents/employees placed Plaintiff DAVID ROSARIO in handcuffs and then repeatedly kicked him and then threw him onto the ground.

85. This conduct by officers/agents/employees of Defendant THE CITY OF NEW YORK constituted assault and battery against Plaintiff DAVID ROSARIO.

86. Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) placed Plaintiff DAVID ROSARIO in handcuffs and then repeatedly kicked him and then threw him onto the ground.

87. This conduct by Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) constituted assault and battery against Plaintiff DAVID ROSARIO.
88. Due to the assault and battery against him, Plaintiff DAVID ROSARIO sustained serious and permanent injuries.
89. As a proximate result of the assault and battery committed against him, the Plaintiff DAVID ROSARIO suffered the damages as aforesaid.

#### **COUNT 6: DEFAMATION AND DAMAGE TO REPUTATION**

90. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 89 with the same force as if alleged in full herein.
91. That at all times mentioned herein, Defendant THE CITY OF NEW YORK, via its officers/agents/employees acting within the scope of their agency or employment, defamed the plaintiff DAVID ROSARIO, resulting in great damage to his personal and professional reputation.
92. That at all times mentioned herein, Defendant POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) defamed the plaintiff DAVID ROSARIO, resulting in great damage to his personal and professional reputation.
93. As a proximate result of the aforementioned defamation and damage to his reputation, the plaintiff DAVID ROSARIO has suffered the damages as aforesaid.

#### **COUNT 7: MALICIOUS ABUSE OF PROCESS, ILLEGAL CONFINEMENT**

94. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 93 with the same force as if alleged in full herein.
95. The officers/agents/employees of the New York City Police Department, acting in the scope of their employment or agency with the Defendant, THE CITY OF NEW YORK, illegally confined Plaintiff DAVID ROSARIO in Central Booking overnight when there was no basis for his confinement.
96. Plaintiff DAVID ROSARIO was confined against his will and without his consent for over 24 hours.

97. The officers/agents/employees of the New York City Police Department used the criminal process against the plaintiff in order to illegally confine him and maliciously abuse his rights to due process.
98. POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) illegally confined Plaintiff DAVID ROSARIO and violated his constitutional rights.
99. As a proximate result of this malicious abuse of process and false confinement, Plaintiff suffered the damages as aforesaid.

#### **COUNT 8: MALICIOUS PROSECUTION**

100. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 99 with the same force as if alleged in full herein.
101. The Defendant THE CITY OF NEW YORK instigated and continued its prosecution of Plaintiff DAVID ROSARIO even though it knew or should have known any charges were baseless.
102. Plaintiff has incurred and continues to incur legal fees, damage to his reputation and emotional distress due to this malicious prosecution.
103. As a proximate result of this malicious prosecution, Plaintiff suffered the damages as aforesaid.

#### **COUNT 9: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

104. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 104 with the same force as if alleged in full herein.
105. POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) intentionally inflicted emotional distress upon Plaintiff DAVID ROSARIO.
106. As a proximate result of this intentional infliction of emotional distress, Plaintiff suffered the damages as aforesaid.

WHEREFORE, plaintiff DAVID ROSARIO demands judgment against the defendants THE CITY OF NEW YORK and POLICE OFFICER MICHAEL POMERANTZ (tax # 947364) and award in the following amounts:

- a) an amount in excess of the jurisdictional limits of all lower courts, each; together with the costs and disbursements of this action;
- b) exemplary damages in favor of the plaintiff DAVID ROSARIO;

- c) costs of this action, including reasonable attorneys' fees to the Plaintiff pursuant to 42 U.S.C. § 1988;
- d) such other and further relief as the Court may deem appropriate.

Dated: New York, New York  
October 2, 2012

Yours, etc.,



---

JESSE BARAB, ESQ.

Attorney for Plaintiff

DAVID ROSARIO

30 Park Circle

White Plains, New York 10603

(212) 781-0633

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )     ss.:

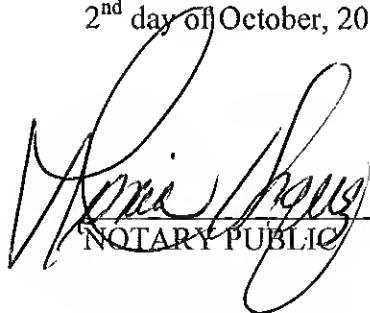
DAVID ROSARIO, the plaintiff in the foregoing action, being duly sworn,  
depose and say as follows:

That I am the plaintiff in the foregoing action and reside in the State of New  
York, City of New York and County of New York.

That I have read the foregoing Complaint and know the contents thereof; that the  
same is true to my own knowledge except as to the matters therein stated to be alleged  
upon information and belief and that as to those matters I believe them to be true.

  
\_\_\_\_\_  
DAVID ROSARIO

Sworn to before me this  
2<sup>nd</sup> day of October, 2012

  
\_\_\_\_\_  
NOTARY PUBLIC

DANIA HENRIQUEZ  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01HE6200182  
Qualified in New York County  
My Commission Expires February 02, 2013

---

---

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

---

---

DAVID ROSARIO,

Plaintiff,

-against-

THE CITY OF NEW YORK and  
POLICE OFFICER MICHAEL POMERANTZ (tax # 947364),

Defendants.

---

---

SUMMONS AND VERIFIED COMPLAINT

---

---

**JESSE BARAB, ESQ.**

*Attorney for the Plaintiff*

*DAVID ROSARIO*

*Office and address*

**30 Park Circle**

**White Plains, New York 10603**

**(212) 781-0633**

**Fax: (212) 781-6203**

---

---